

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20544**

In the Matter of)	
VoEX, Inc.)	
Petition for Limited Waiver)	
of Section 52.15(g)(2)(i) of the)	CC Docket No. 99-200
Commission's Rules Regarding Access)	
to Numbering Resources)	

PETITION FOR LIMITED WAIVER

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VOEX, INC.'S PETITION FOR LIMITED WAIVER

I. INTRODUCTION

VoEX, Inc. ("VoEX") respectfully requests that the Federal Communications Commission ("Commission") grant it a limited waiver of Section 52.15(g)(2)(i) of the Commission's Rules, 47 C.F.R. § 52.15(g)(2)(i), to allow VoEX to obtain numbering resources directly from the North American Numbering Plan Administrator ("NANPA") and/or the Pooling Administrator ("PA") in a manner comparable to the waiver granted to SBC Internet Services, Inc. ("SBC-IS").¹ VoEX intends to use these numbering resources to deploy IP-enabled services, including Voice over Internet Protocol ("VoIP") services, on a commercial basis to its customers.

The Commission should grant this limited waiver request because good cause exists and granting the request would serve the public interest. VoEX intends to deploy innovative new services using more efficient means of interconnection with the Public Switched Telephone Network ("PSTN"). By improving its efficiency in the delivery of IP-based services, VoEX will be able to continue to innovate its service offerings to the benefit of its customers. The

¹ *In the Matter of Administration of the North American Numbering Plan*, Order, CC Docket 99-200, FCC 05-20 (released Feb. 1, 2005) ("*SBC-IS Waiver Order*").

interconnection will be similar to the means used by a state-certificated carrier, but VoEX would not be considered a carrier. Additionally, VoEX requests the waiver of Section 52.15(g)(2)(i) in a manner comparable to the SBC-IS waiver and until the Commission adopts final numbering rules either through the North American Numbering Council or in the *IP-Enabled Services* proceeding.² VoEX will comply with all of the relevant conditions established by the Commission in the *SBC-IS Waiver Order*.³ Furthermore, VoEX asks the Commission to review and grant its waiver request on an expedited basis given that the waiver involves new technologies.

II. BACKGROUND

VoEX is a high-end VoIP integrator and enhanced services provider that offers end-to-end Session Initiated Protocol (“SIP”) based voice network applications and specializes in customized applications for communications-intensive businesses and universities. Currently, VoEX is only able to obtain access to telephone numbers through competitive local exchange carriers (“CLECs”) by purchasing a Primary Rate Interface (“PRI”) line or Direct Inward Dialing (“DID”). These telephone numbers are necessary for VoEX customers on a broadband IP network to receive calls from parties served by a carrier operating a time division multiplexed (“TDM”) network within the PSTN. According to the arrangements that VoEX has entered into with vendors, the vendor terminates VoEX’s customer’s communications on the PSTN or delivers the traffic to another carrier for termination on the PSTN.⁴

² *IP-Enabled Services*, Notice of Proposed Rulemaking, WC Docket No. 04-36, 19 FCC Rcd 4863 (2004) (“*IP-Enabled Services NPRM*”).

³ *SBC-IS Waiver Order* at ¶¶ 4, 9.

⁴ For example, interexchange traffic is delivered to incumbent LECs.

“Pure” VoIP providers such as VoEx, however, are not able to directly acquire telephone numbers from NANPA or the PA according to the Commission’s existing rules.⁵ Specifically, Section 52.15(g)(2)(i) requires that an applicant requesting North American Numbering Plan numbering resources must be “authorized to provide service in the area for which the numbering resources are being requested.”⁶ The Commission has interpreted this rule as requiring “carriers [to] provide, as part of their applications for initial numbering resources, evidence (*e.g.*, state commission order or state certificate to operate as a carrier) demonstrating that they are licensed and/or certified to provide service in the area in which they seek numbering resource[s].”⁷ In other words, an applicant must be a state-certificated common carrier in order to obtain numbering resources directly from NANPA and/or the PA and VoIP providers are not.

As the Commission found in the *Vonage Order*, VoIP services, such as the services provided by VoEX, are interstate services.⁸ Since VoEX is not a state-certificated common carrier, the Company cannot obtain numbering resources directly from NANPA and/or the PA without a waiver of Section 52.15(g)(2)(i) of the Commission’s Rules. VoEX requests a limited waiver of Section 52.15(g)(2)(i) so that it can obtain numbering resources directly from NANPA and/or the PA without having to become a state-certificated common carrier. Allowing VoEX to directly obtain numbers from NANPA and/or the PA will help to expedite the implementation of IP-enabled services that interconnect to the PSTN and will enable VoEX to deploy innovate new

⁵ SBC-IS is the sole exception because the Commission previously granted SBC-IS’ waiver request.

⁶ 47 C.F.R. § 52.15(g)(2)(i).

⁷ *Numbering Recourse Optimization*, Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 99-200, 15 FCC Rcd 7574, ¶ 97 (2000).

⁸ *See generally, Vonage Holdings Corporation [sic] Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, Memorandum Opinion and Order, WC Docket No. 03-211 (rel. Nov. 12, 2004).

services and encourage the rapid deployment of new technologies and advanced services that benefit American consumers. In addition, granting a waiver to VoEX to facilitate new interconnection arrangements is consistent with Commission precedent.⁹

III. DISCUSSION

A. The Requested Waiver is Comparable to the SBC Internet Services, Inc. Waiver

The Commission granted a limited waiver to SBC-IS and stated that similar relief was available “to an extent comparable” to what the Commission set forth.¹⁰ VoEX submits that it will comply with all of the conditions the Commission established in granting SBC-IS’ request for numbering resources. Specifically, VoEX will comply with the Commission’s numbering utilization and optimization requirements and industry guidelines and practices as well as all other applicable state numbering regulations. VoEX will also file the Numbering Resource Utilization and Forecast Report (“NRUF”) and will comply with the thousand-block number pooling requirements and with local number portability requirements.¹¹

In addition, VoEX asserts that it will meet the “facilities readiness” requirements of Section 52.15(g)(2)(ii). VoEX will provide a copy of an interconnection agreement approved by a state commission, or, alternatively, VoEX will submit evidence, prior to filing an application for numbering resources, that it has ordered an interconnection service pursuant to a tariff that is generally available to other providers of IP-enabled voice services.¹² VoEX also recommends that the Commission allow unaffiliated providers of VoIP services, like VoEX, to demonstrate

⁹ *SBC-IS Waiver Order* at ¶ 6.

¹⁰ *Id.* at ¶ 4.

¹¹ *Id.*

¹² *SBC-IS Waiver Order* at ¶ 10.

facilities readiness through means other than those identified by the Commission in the *SBC-IS Waiver Order*. The Commission adopted the filing of an interconnection agreement or evidence that SBC-IS had purchased a service from a generally available tariff to safeguard against SBC-IS obtaining discriminatory access to the network through its LEC-affiliated company, SBC Communication, Inc.¹³ The same concerns are not present for a company like VoEx and therefore such companies should have flexibility in how they demonstrate facilities readiness.

Moreover, VoEX only requests the waiver until the Commission adopts final numbering rules regarding IP-enabled services. VoEX recognizes that the Commission has not yet decided whether any action relating to numbering resources is needed.¹⁴ However, granting this limited waiver will not prejudice the outcome of the *IP-Enabled Services* proceeding because the Commission retains complete discretion to take whatever action it finds necessary.

B. “Good Cause” Exists to Grant VoEX’s Request for a Limited Waiver

Pursuant to Section 1.3 of the Commission’s Rules, the Commission may waive a rule when “good cause” is demonstrated.¹⁵ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.¹⁶ In addition, the Commission may take into account considerations of hardship, equity, or the more effective implementation of overall policy on an individual basis.¹⁷ Thus, waiver of the

¹³ *See id.*

¹⁴ *IP-Enabled Services NPRM* at ¶ 76 (seeking comments on the desirability of numbering resources for IP-enabled services).

¹⁵ 47 C.F.R. § 1.3; *see also WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972) (“*WAIT Radio*”).

¹⁶ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (“*Northeast Cellular*”).

¹⁷ *Id.*; *WAIT Radio*, 418 F.2d at 1159.

Commission's rules is appropriate when special circumstances warrant a deviation from the general rule and such a deviation will serve the public interest.¹⁸

VoEX asserts that special circumstances warrant a deviation from the general rule that limits the assignment of numbering resources to state-certificated carriers. In granting SBC-IS' request for waiver, the Commission highlighted that granting the waiver request would expedite the implementation of IP-enabled services interconnected to the PSTN and allow for the deployment of innovative new services as well as encourage the rapid deployment of innovative new services that benefit American consumers.¹⁹ Granting VoEX's waiver request would serve to further the same goals and would encourage the implementation of PSTN interconnected IP-enabled services and other new services and technologies. In addition, by granting the waiver, VoEX will be able to deploy more efficiently configured networks and services without having to subject itself to state common carrier regulation solely for the purpose of obtaining direct access to numbering resources. Accordingly, "good cause" exists to grant VoEX's waiver request.

Granting the waiver petition furthers the public interest because it encourages the deployment of broadband infrastructure to United States' citizens. The Commission has recognized that IP-enabled services have increased economic productivity and growth.²⁰ In allowing VoEX to achieve efficiencies that the Company cannot realize without direct access to numbering resources, the Commission is encouraging innovation and expediting the delivery of

¹⁸ *Id.*

¹⁹ *SBC-IS Waiver Order* at ¶ 4.

²⁰ *Id.* at ¶ 8; *IP-Enabled Services NPRM* at ¶ 5.

advanced services to consumers.²¹ By granting this waiver, the Commission will stimulate the implementation of IP-enabled services and allow for increased communications choices for American consumers. Accordingly, granting the waiver request will serve the public interest.

C. The Commission Should Grant VoEX's Waiver Request on an Expedited Basis

In the *New Technology Policy Statement*, the Commission stated that it would review waiver requests for technical and market trials on an expedited basis.²² VoEX is seeking a waiver of Section 52.15(g)(2)(i) to deploy IP-enabled service offerings until the Commission adopts final numbering rules, even though the deployment is not a trial. Consequently, the Commission should review VoEX's request as described in the *New Technology Policy Statement*. As previously mentioned, the Commission has acknowledged the importance of encouraging the development of IP-enabled services.²³ Furthermore, VoEX is only seeking a waiver until the Commission adopts final numbering rules for IP-enabled services.

²¹ *Id.* at ¶ 6.

²² 1998 *Biennial Regulatory Review – Testing New Technology*, Policy Statement, CC Docket 98-94, FCC 99-53, ¶¶ 4, 20, 23-24 (1999) (“*New Technology Policy Statement*”).

²³ *IP-Enabled Services NPRM* at ¶ 5.

IV. CONCLUSION

For the reasons described above, VoEX respectfully requests that the Commission grant the Company a limited waiver of Section 52.15(g)(2)(i) of its rules—comparable to that granted to SBC-IS to allow VoEX to obtain numbering resources directly from NANPA and/or the PA for use in the provision of IP-enabled services.

Respectfully submitted,

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